

So You're Gonna Revise the Zoning Ordinance! Part One

By Leslie S. Pollock, AICP

When the mayor and city council announce it is time to revise the zoning ordinance, they unleash a process that will involve consideration of issues that at first blush, appear totally unrelated to zoning. Persons who believe they are well versed in the zoning ordinance will invariably discover that some assumptions or premises about the ordinance are not true and that the unintended consequences of certain zoning requirements are legion. Even the zoning administrator—typically the person most knowledgeable about the intricacies of the ordinance—can always find something new and disquieting, as little-used provisions are examined, dissected, and discussed.

Zoning does much more than “regulate land use.” The detailed policies and standards contained in the ordinance effectively structure the community’s policy in many other areas, including urban design, housing, environmental quality, property value, traffic, and transportation.

This issue of *Zoning News* explores issues related to who is in charge of revising the ordinance, assessing the state of the present ordinance, and determining the necessary changes. Next month’s issue moves readers through the process of a zoning redraft, including current approaches and techniques for the ordinance outline and organization, administrative provisions, district structure, development standards, definitions, and reviewing and adoption.

The scope and implications of the revision are rather significant, given that zoning does much more than “regulate land use.” The detailed policies and standards contained in the ordinance effectively structure the community’s policy in many other areas, including urban design, housing, environmental quality, property value, traffic, and transportation. Moreover, it does this in a degree of detail that makes the policies of the comprehensive plan resemble community design as if done with a blunt instrument. The zoning revision usually comes after a comprehensive plan update, and it is often during that update that community leaders working to secure support of the plan point out that the policies in the plan are flexible. The zoning ordinance is just the opposite, with many of its policies

inflexible and many of its standards unbending. Moreover, while a substantial number of these standards have been codified and sanctified by years of use, community leaders are not always sure of the origins, reasons, utility, and impacts of certain development standards in the ordinance.

The ordinance rewrite generates new constituencies. Groups appear that favor the existing development patterns and believe that the status quo ought to be preserved, telling city officials that the strength of the present ordinance has made such development patterns. Other groups come forward asking for modifications to serve the needs of one constituency or the other. Some constituencies ask for more controls while others ask for fewer.

The Zoning Revision Process

How does one balance these conflicts? How does one determine what standards to keep and what standards to change? How does the community make the ordinance more flexible yet still predictable—as is often the cry—and continue protecting the ever-present issue of local property values? Every community approaches an ordinance revision in a manner best suited to the issues faced by the community, the politics of the moment, and the resources available. Some communities jump head-first into the process. Most, however, think the zoning revision process through and decide that they would be best served by a basic five-step process:

- Put someone in charge.
- Identify what is wrong with the ordinance.
- Agree upon the scope of changes necessary.
- Redraft the ordinance.
- Review and adopt the ordinance.

The strength of this process is that it can involve people who are interested or concerned, it approaches the ordinance revision in a sequential manner and builds consensus on proposed changes, and it keeps the process focused.

Who Is in Charge?

Zoning is a key municipal function, and it is obvious that the mayor and city council will be in charge of an ordinance revision. But who will shepherd the revision on its way to final approval? First, the city council may want to retain control and actively participate in all facets of the process. Alternative candidates for this role are the plan commission, zoning board of appeals, or zoning commission. State statutes may also give guidance in this decision, as may local tradition.

If the community is open to considering options, several observations might be useful. First, the zoning revision is essentially a policy process, and the group charged with the revision should have a policy orientation. Second, such a revision cuts across many areas of expertise, including law, planning, architecture and urban design, real estate, and construction, amounting to more than an adjustment of regulatory provisions. Third, a revision will involve various

constituencies with different issues and concerns. The process might become controversial, so the group should be skilled and comfortable leading an open public process. Probably the most appropriate groups, given these observations, are the plan or zoning commissions constituted especially for this purpose.

The assignment of staff to the revision group is critical. The process is too demanding and too important to be assigned to an individual who is overloaded with other duties. Persons working in the zoning revision should have available adequate planning or zoning department personnel to carry out the necessary research and conduct additional meetings. Even if the city decides to use a consultant in the revision process, provision for adequate and knowledgeable support staff who know the ordinance is essential.

Broad-based public input is difficult at the early stages of zoning revision.

People find zoning an easy issue to talk about when it impacts individual property or a single neighborhood, but its often complex structure and detail make it a topic that does not hold a high degree of interest.

What Is Wrong with Our Present Ordinance?

You cannot fix the zoning ordinance unless you agree on what is broken. Therefore, a careful and complete listing of problems and issues is an important task. This list is best developed through a program of community input that reaches out to the key members of the "zoning constituencies," including city staff; the plan commission and zoning board of appeals; the city council; the real estate community, including sales, construction, design, and finance; and the activist community, including representatives from homeowners associations, civic betterment leagues, and community-based organizations.

Broad-based public input is difficult at the early stages of zoning revision. People find zoning an easy issue to talk about when it impacts individual property or a single neighborhood, but its often complex structure and detail make it a topic that does not hold a high degree of interest. Therefore, it is best to structure working groups of representatives from the constituencies listed above to keep a routine check on issues from various perspectives. Obviously, it is important to keep the community informed through the media and community outreach mechanisms, but a zoning update is much different from a comprehensive plan update, and in its initial stages usually fails to attract broad-based participation.

Leslie S. Pollock is a principal consultant of Camiros Ltd., a planning and zoning consulting firm with offices in Chicago, Denver, and Indianapolis. He has prepared numerous zoning ordinance revisions for communities across the country and is currently assisting Clark County (Las Vegas), Nevada, with the preparation of a new Unified Development Code.

Three key issue-based analyses should be performed to complement the issues addressed by the constituencies, including a review of the relationship of the comprehensive plan to the zoning ordinance, a technical review of the structure and consistency of the zoning ordinance in light of current best practices, and an analysis of zoning change actions over the past five years to gain a sense of key problems. Such analyses should look at the pattern of variations, text, and map amendments.

Among the typical scope of issues to be addressed or investigated are:

- *The utility of the current ordinance organization.* Does the ordinance clearly specify who is responsible for various application reviews and approvals? Is that responsibility assigned to the most appropriate board, commission, or staff position?
- *The relationship of district structure to the comprehensive plan.* Do the purposes and standards of each zoning district relate to applicable policies of the comprehensive plan?
- *The adequacy of current administrative structure.* Can applicants easily identify who to see or what to apply for when they have a zoning problem or need? Do the reviews and approvals happen in a timely manner?
- *The utility of current development standards.* Are current parking, landscape, environmental, and similar requirements easily applied, and do they have the desired results?
- *The currency and/or lack of definitions.* Are terms defined in a contemporary manner, and are all major terms used in the ordinance clearly defined?
- *The scope of ordinance interpretations.* Does the ordinance clearly specify district requirements and the related approval process, or does the applicant often depend upon staff interpretation of such requirements?
- *The relationship of zoning bulk standards to the development being constructed.* Do the height and yard regulations encourage or discourage a desired type of development? Does it result in buildings of desirable scale and design?

This material should be prepared and summarized in a form that can be presented to key decision makers, the zoning board, plan commission, or city council for review and confirmation, as well as made available to the participating public. This list essentially represents the first summary statement of the problems or conditions that need to be resolved or addressed through any zoning ordinance revision, and can help to focus the community and the group charged with the zoning revision on the scope of changes to be addressed.

What Changes Are Necessary?

The value of such a list is that it can be used to determine the changes that should be made to the zoning ordinance through the revision process. The scope of these changes can be thought of as proposed zoning policy. Comprehensive planning is often thought of as a policy exercise and zoning is often viewed of as a regulatory exercise. Yet, there is as much or more policy development inherent in the zoning process as within the comprehensive planning process. The need for policy at the zoning level may not be evident at first. However, if zoning is a book of rules, then why are such rules set, and by whom? Zoning is not a general regulatory measure, but a highly specific

approach toward addressing such details as placement of buildings; specifying the type of land uses that can be located on specific sites; and addressing a myriad of small but significant requirements for parking spaces, sign location and design, and tolerable noise, vibration, and dust levels through site uses. The guidelines and policies required to provide such direction are extensive, and their development is very demanding.

While many of the detailed standards, such as those for parking, should result from national best practice research, it is clear that some of the more particular community-based rules must emerge through local policy. This includes rules pertaining to administration, district and land-use structure, and development standards. For example, current revision activities tend to consider the following administrative questions:

- How do we streamline the development review process?
- Should we utilize hearing officers?
- What are the hearing and decision responsibilities of the zoning board of appeals, plan commission, and city council?
- Should the community move to site plan review or even further into design review as part of the zoning approval process?

Zoning use and bulk policy questions are often quite specific and related to development problems raised within the community. For example, one of the key questions asked in many communities is how to adjust the zoning ordinance to address the "teardown" and "mega-house" development trends occurring in established neighborhoods around the country. Other questions might include:

- Are the present commercial districts encouraging or discouraging the desired urban design character?
- Are more districts needed to carry out the plan policies and reflect community desires for specific control in one area and more flexibility in another?

Depending on the answers to these and similar questions, it will be clear whether changes in district structure are needed. Policies need to be established to guide the drafting of new districts.

Development standards always need attention in the revision process. Do the present standards require too much or too little parking? Do the community's urban design concerns suggest a need for additional or modified landscape and site design standards? Does the community need to be more flexible in accommodating accessory uses such as home occupations and day care? Are the environmental standards, addressing noise, lighting, vibration, odor, and dust useful and applied properly?

Much of the research into these standards or policies may be directed toward best practices. However, best practices vary depending upon how aggressive the community wants to be in implementation and measurement, and how restrictive it wants to be regarding on-site development. Answers to these and similar questions go to the heart of regulatory control.

In many respects, it is better to agree early on the scope of the changes to the ordinance rather than debate the proposed changes when the ordinance is completed. To that end, it is useful to suggest policy alternatives for resolving the key issues identified early in this stage to encourage debate and discussion by the groups that raised the issues. It is also important to secure adoption of these policy decisions by the entity responsible for the revision prior

to undertaking the redraft. The adopted policies list resulting from this discussion becomes not only the guide to ordinance drafting, but the key tool in supporting the revised zoning ordinance during the hearing and adoption process.

ZONING NEWS BRIEFS

Lake Tahoe Preservation Case

The Tahoe Sierra Preservation Council (TSPC) is claiming partial victory in a lawsuit against the Tahoe Regional Planning Agency (TRPA). The lawsuit, filed in 1984 by approximately 449 people who own property in the Lake Tahoe area, alleged that the planning agency's zoning regulations had taken away all viable economic use of their property.



David Brody

The water clarity of Lake Tahoe has been decreasing since the early 1950s because of increased development and more impervious surface coverage. Stormwater runoff and high algae growth in the lake (a consequence of development) is causing the lake's color to change from clear blue to "opaque green."

In 1980, an amendment in the Tahoe Regional Planning Compact required the agency to protect Lake Tahoe and its environment by developing a new regional plan and environmental threshold carrying capacities. Following that decision, TRPA passed strict land-use regulations, eventually issuing a moratorium on all new construction in the area. The moratorium was in effect until a new regional plan was adopted.

The regional plan, adopted in 1984, classified land into "land capability districts" based on how prone the lake was to environmental damage. Vacant land was placed into districts ranging from one (the least suitable for development) to seven (the most suitable). Virtually no development was allowed in districts below three because of the high risk of erosion in these areas. Development in stream environment zones, which are areas that act as filters for stormwater runoff, was restricted.

In the recent U.S. District Court ruling, Judge Ed Reed found that a taking had occurred during the moratorium of 1981, but stopped when the regional plan was adopted in 1984. The next step is to go back to court to determine how much compensation each property owner will receive. Mary Gilkannfar, executive director of TSPC, says: "It will probably come out in the range of [a total of] \$20 to \$50 million." John Marshall, council for TRPA, has already begun to appeal the decision. The Planning Advisory Service can provide PAS subscribers with the U.S. District Court decision.

Becki Retzlaff

The Anonymity of Use: Battered Women's Shelter

A Colorado community found itself in a bind recently when a local battered women's shelter applied for a permit to undergo a building expansion. City planners became concerned when they learned that the community's development review process required public notification of property owners within 200 feet of the development. It was conceivable to shelter administrators that such notification would generate unwanted public exposure and jeopardize the safety of shelter residents.

The ordinance could offer no protection of the use, prompting the city to seek legal counsel. Officials decided that nearby property owners would still be notified of the development, but the facility would be identified as a boarding or rooming house with an office rather than as a battered women's shelter. The city's ordinance had defined this type of use as permitted in the district. A director on the shelter's board acted as the applicant. Although the city was sympathetic to the concerns of shelter administrators, the notification requirements of the ordinance had to be honored. "We were obligated to get due process," says one city planner. City administrators do not expect any objections from adjacent property owners.

City planners became concerned when they learned that the community's development review process required public notification of property owners.

Another Colorado community is protecting the location of these facilities through a Battered Women's Homes provision in its ordinance. The city council exempts battered women's homes from any public review, including but not limited to a public hearing. Within 30 days of receipt of a completed application for the establishment of a battered women's home, the planning director sets a date for a closed administrative review of the application with planning department staff and the applicant.

The ordinance of a third community in Colorado contains a Safehouses; Protection of Location provision. Thirty-one days following the approval of a special use permit for a safehouse, the city clerk removes or excises all information concerning the

location of the safehouse from every document in the possession of the city. The city clerk retains all documents; no other city department, employee, or elected official may do so. However, battered women's shelters are not exempt from posting and notification requirements. The Planning Advisory Service will make these ordinances available to PAS subscribers.

Michael Davidson

ZONING Reports

State Property Rights Laws: The Impacts of Those Laws on My Land

Harvey M. Jacobs. Lincoln Institute of Land Policy, 113 Brattle St., Cambridge, MA 02138. 1999. 32 pp. \$14 (25 percent discount for 10 or more). \$3.50 shipping and handling on first copy, \$.50 for each additional copy.

Property rights laws in some form have been enacted in 26 states in the past decade, so this assessment of their impacts is a timely one for planners. The author suggests that, for the most part, their feared impacts have not materialized. A compensation law adopted by Mississippi in 1994 has not produced a single cause of action. The author attributes this to the lack of an organized constituency based on real grievances, saying that most laws simply result from the advocacy of a lawmaker in tune with the ideology of property rights. The report breaks down property rights statutes into four categories involving assessment of new regulations for impact on property rights, compensation, conflict resolution, and other approaches, and then analyzes the track record of different kinds of laws in Kansas, Mississippi, Florida, and Arizona.

Better Site Design: A Handbook for Changing Development Rules in Your Community

Prepared for the Site Planning Roundtable by the Center for Watershed Protection, 8391 Main St., Ellicott City, MD 21043. August 1998. 210 pp. \$35.

Pulling together under one cover the resources gathered in this volume to address land-use impacts on stormwater runoff and water quality is an impressive feat. This thorough and practical handbook is designed for use by planners, developers, engineers, and building officials. It provides a set of 22 development principles covering issues like street design, parking codes, setbacks and frontages, sidewalks, and other issues affecting impervious surface cover, as well as open space design, buffer systems, and tree conservation. It includes a variety of references to other resources from local governments, professional associations, and federal agencies. This report is well worth adding to any planning library.

Zoning News is a monthly newsletter published by the American Planning Association. Subscriptions are available for \$55 (U.S.) and \$75 (foreign). Frank S. So, Executive Director; William R. Klein, Director of Research.

Zoning News is produced at APA. Jim Schwab and Mike Davidson, Editors; Shannon Armstrong, Barry Bain, Jerome Cleland, Fay Dolnick, Sanjay Jeer, Megan Lewis, Marya Morris, Becki Retzlaff, Reporters; Cynthia Cheski, Assistant Editor; Lisa Barton, Design and Production.

Copyright ©1999 by American Planning Association, 122 S. Michigan Ave., Suite 1600, Chicago, IL 60603. The American Planning Association also has offices at 1776 Massachusetts Ave., N.W., Washington, DC 20036.

All rights reserved. No part of this publication may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the American Planning Association.

Printed on recycled paper, including 50-70% recycled fiber and 10% postconsumer waste.

